

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD ANTHONY THURMOND,

Petitioner,

Case No. 1:06-cv-580

v

HON. JANET T. NEFF

KENNETH MCKEE,

Respondent.

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OPINION

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that all claims in the habeas petition be denied on their merits. The matter is presently before the Court on Petitioner's March 20, 2009 objections to the Report and Recommendation, which he supplemented on March 25, 2009 and March 27, 2009. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Final Order pursuant to FED. R. CIV. P. 58.

Petitioners' objections demonstrate his general disagreement with the Magistrate Judge's analysis, but his objections do not reveal any factual or legal error by the Magistrate Judge. To the extent Petitioner's objections also include a challenge to the Magistrate Judge's decision to analyze the merits of his claims without addressing Respondent's procedural-default defense, this objection also lacks merit. As the Magistrate Judge indicated, both the United States Supreme Court and the

Sixth Circuit Court of Appeals have held that federal courts are not required to address a procedural-default defense before deciding against a petitioner on the merits. *See Lambrix v. Singletary*, 520 U.S. 518, 525 (1997); *Mahdi v. Bagley*, 522 F.3d 631, 635 (6th Cir. 2008); *Hudson v. Jones*, 351 F.3d 212, 215-16 (6th Cir. 2003). This Court therefore denies Petitioner's objections and approves and adopts the Report and Recommendation of the Magistrate Judge as the opinion of the Court.

Having so determined, the Court must further determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability as to the issues raised. The Court must review the issues individually. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 484. Petitioner presented claims challenging the sufficiency of the evidence to support his conviction for first-degree Criminal Sexual Conduct, alleging sentencing error, challenging the competency of the trial judge, challenging the post-conviction procedure, and challenging his sentence. Upon review, this Court finds that reasonable jurists would not find the Court's assessment of Petitioner's claims debatable or wrong. A certificate of appealability will therefore be denied as to each issue presented.

A Final Order will be entered consistent with this Opinion.

Dated: April 2, 2009

/s/Janet T. Neff
JANET T. NEFF
UNITED STATES DISTRICT JUDGE